IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 25809 of 2007(V)

CMA.22/2006 of ADDL.DISTRICT COURT, KOZHIKODE
OS.673/2001 of ADDL.M.C.,KOZHIKODE-I

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PETITIONER:

A.P.KRISHNAKUMAR, AGED 55 YEARS,
S/O. A.P.BALAKRISHNA PILLAI, BRAHMANADA BHAVAN,
KOOTTOOLI AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS:

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1. T.V.BHARGAVI AMMAL, AGED 57 YEARS,
W/O. RAMACHANDRAN, 'MINI', 38/2295,
EDAKKAD AMSOM AND DESOM, KOZHIKODE TALUK.

2. THEKKE VALIYAVEETTIL GOPALAKRISHNA
PILLAI, AGED 65 YEARS, S/O. NARAYANANKUTTY PILLA,
NAGARAM AMSOM AND DESOM, KOZHIKODE TALUK.

3. CHERUKAD VISWANATHAN NAIR, AGED 67 YRS,
S/O. GOVINDANKUTTY PILLAI, 27/676,
KOTTOOLY AMSOM DESOM, KOZHIKODE TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts.
Ext.P1 true copy of the plaint in OS 673/2001 on the files of the Prl. Munsiff Court-I, Kozhikode.

Ext.P2 true copy of the commission report dated 20.8.1997 in I.A.4925/1976 in O.S. 66/1968 on the files of the First Addl. Sub Court, Kohikode.

Ext.P3 true copy of the judgment dated 24.10.2005 in O.S. 673/2001 of the Principal Munsiff Court-I, Kozhikode

Ext.P4 true copy of the order dated 31.7.2007 in CMA 22/2006 of the 1st Addl. Dist. Court, Kozhikode.

M.N.Krishnan, J.

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W.P(C).No.25809 of 2007

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Dated this the 18th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order of the District Judge, Kozhikode in C.M.A.No.22 of 2006. The C.M.A. was filed against the order of the Munsiff, Kozhikode whereby he found that the market value of the property exceeds the pecuniary jurisdiction of the court and therefore directed the plaint to be returned. In appeal, the learned District Judge permitted the plaintiff to remit court fee as per Section 25(b) of the Court Fees Act. As per that Section, court fee has to be paid only on half of the market value of the property.

2. The suit relates to a claim for one out of 24 shares. When Section 25(b) of the Court Fees Act is made applicable then the market value of the property has to be calculated as contemplated under Section 7(2) or Section 7(3) or Section 7(3)(A) of the Court Fees Act. Learned counsel for the writ petitioner

submits that the trial court has already calculated the market value of the property and no purpose will be served by directing the market value again to be considered by the very same court. The trial court proceeded on the basis of Section 40 of the Court Fees Act for the reason that the plaintiff had shown that Section. Now a reading of the plaint would reveal that it is a suit for a declaratory relief and consequential injunction and therefore, Section 25(b) of the Court Fees Act will apply. But it is true that the court has to consider what is the court fee due, how the court fee has to be calculated and what is the nature of the property. If there are already sufficient materials, the court may proceed with it in accordance with law. Otherwise, the court is given power to conduct an enquiry into the matter to ascertain the correct market value of the property.

3. I am not fully satisfied with the observations made by the District Judge that a person may not be able to assess the value of the property of 2001 when he visits the property in 2007. The learned Munsiff can dispose of the matter in accordance with the law after complying with all the procedural requirements and calculating the court fee after fixing the market value of the

property in accordance with the provisions of the Kerala Court Fees Act. Needless to say, if the present petitioner wants to adduce evidence in support of his contentions regarding the correctness of the court fee on certain aspects he may do so, so also the plaintiff. If the court finds that the jurisdictional value exceeds Rs.1 lakh, the trial court can only return the plaint for proper presentation before appropriate court.

With these observations, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

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